

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

ROBERT ELLIOTT, Plaintiff, v. CITY OF SIOUX FALLS, PAUL TENHAKEN, in his official capacity as Mayor of Sioux Falls, Defendants.	22-cv-04071 DEFENDANTS' ANSWER TO AMENDED COMPLAINT
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Comes now Defendants City of Sioux Falls and Mayor Paul TenHaken (“these Defendants”), by and through their counsel of record, and for their answer to Plaintiff’s Amended Complaint, state and allege as follows:

1. Plaintiff’s Amended Complaint fails to state a claim or cause of action upon which relief may be granted against these Defendants.
2. These Defendants deny each and every allegation, matter, and thing contained in Plaintiff’s Amended Complaint except that which is hereinafter specifically admitted or qualified.

PARTIES, VENUE AND JURISDICTION

3. These Defendants admit the allegations in paragraphs 1 – 7 of Plaintiff’s Amended Complaint.

INTRODUCTION AND FACTS RELEVANT TO ALL COUNTS

4. These Defendants acknowledge that paragraph 9 of Plaintiff’s Amended Complaint sets forth the description of his claims in this lawsuit.

5. Answering the allegations in paragraph 10 of Plaintiff’s Amended Complaint, these Defendants acknowledge that the City of Sioux Falls is a home rule municipality responsible for

maintaining its public areas, right-of-ways and accessways. The remainder of the allegations in paragraph 10, however, are statements of law or legal conclusions to which no response is necessary.

6. Answering the allegations in paragraph 11 of Plaintiff's Amended Complaint, these Defendants acknowledge that Plaintiff made numerous complaints using the City's reporting policies and procedures.

7. These Defendants deny the allegations in paragraphs 12 and 13 of Plaintiff's Amended Complaint.

8. Answering the allegations in paragraph 14 of Plaintiff's Amended Complaint, these Defendants acknowledge that the statements therein describe the relief sought by Plaintiff in this action.

9. These Defendants are without sufficient information to admit or deny the allegations in paragraph 15 of Plaintiff's Amended Complaint.

10. These Defendants deny the allegations in paragraphs 16 – 20 of Plaintiff's Amended Complaint.

THE ADA AND ITS IMPLEMENTING REGULATIONS

11. The statements in paragraphs 21 – 26 of Plaintiff's Amended Complaint are statements of law or legal conclusions which speak for themselves and to which no response is required.

12. Answering the allegations in paragraph 27 of Plaintiff's Amended Complaint, Defendants acknowledge that at or about the time alleged, the ADAAG Review Advisory Committee, which was a federal committee, not a Sioux Falls committee, began the process of updating the 1991 ADAAG.

13. These Defendants admit the allegations in paragraphs 28 – 32 of Plaintiff's Amended

Complaint.

FACTUAL ALLEGATIONS

14. These Defendants deny the allegations in paragraphs 33 – 36 of Plaintiff's Amended Complaint.

15. The statements in paragraphs 37, 38 and 39 of Plaintiff's Amended Complaint are statements of law or legal conclusions to which no response is required.

16. These Defendants deny the allegations in paragraphs 40 and 41 of Plaintiff's Amended Complaint.

FIRST CAUSE OF ACTION

17. The statements in paragraphs 42, 43 and 44 of Plaintiff's Amended Complaint are statements of law or legal conclusions to which no response is required.

18. These Defendants deny the allegations in paragraphs 45 – 53 of Plaintiff's Amended Complaint.

AFFIRMATIVE DEFENSES

19. As an affirmative defense, Plaintiff lacks the requisite standing to bring this action.

20. As a further affirmative defense, there is no basis in law or fact for a claim against Mayor Paul TenHaken and Plaintiff's Complaint against Defendant TenHaken should be dismissed.

21. As a further affirmative defense, the City of Sioux Falls has implemented an ADA Transition Plan, recently updated on June 30, 2022, the goal of which is to ensure accessible paths of travel in the public right-of-way for people with disabilities. The Transition Plan outlines the steps the City has taken and will take to provide new, or upgrade existing, pedestrian-access-route features as required by the ADA and its implementing regulations.

22. As a further affirmative defense, the City is currently working on the process for

repairing issues on sidewalks that are the responsibility of the abutting property owner.

Recently, the City worked with the South Dakota Municipal League to make changes to the relevant state laws that impact this process and the City has amended its ordinances to ensure that they will allow the City to take advantage of the efficiencies created in the newly amended state law.

23. As a further affirmative defense, the City faces challenges relating to funding needed to increase the manpower available for the inspection, notice and repair process, as well as to fund curb ramp improvements. A single curb ramp costs between \$3,000 and \$10,000 to add, repair or improve. Because of this substantial cost, the City has a plan for prioritizing improvements and repairs needed so there is a logical and orderly sequence to making the necessary repairs and improvements as things age or are damaged by the elements. Consistent with the priorities set forth in the City's Transition Plan, in 2020, the City invested over \$5.4 million dollars in pedestrian facility improvements, including nearly \$111,000 for new or reconstructed push buttons, nearly \$2 million dollars for new or reconstructed sidewalks and more than \$1million dollars for reconstructed ramps and over \$140,000 for new ramps. In 2021 the City spent over \$3.8 million in pedestrian facility improvements, nearly \$1.6 million for new or reconstructed sidewalks, more than \$867,000 for reconstructed ramps, and nearly \$48,000 for new ramps.

24. As a further affirmative defense, there are approximately 1,250 miles of sidewalk in the City of Sioux Falls. It is the City's goal to inspect 10% of those sidewalks and ramps annually to ensure any necessary repairs and improvements are initiated.

25. As a further affirmative defense, the City has been complying and continues to comply with the requirements of the ADA in ensuring that new construction and alterations are completed in accordance with the requirements set forth by the Department of Justice pursuant to

the ADA. The City provides information to the public on its website as to how it prioritizes accessibility projects, what work has been done in recent years as well as work in progress.

26. As a further affirmative defense, the City has acted in good faith in all interactions with Plaintiff regarding these matters in an effort to determine Plaintiff's priorities and to properly address them as provided in the City's transition plan. The City has invited Plaintiff to participate in the discussions and ongoing improvements related to making the City as accessible as possible for all, and openly communicating relevant updates and developments to the Plaintiff. Nonetheless, such good faith efforts have been largely ignored by Plaintiff.

27. Defendant denies the nature and extent of the damages alleged by Plaintiff.

WHEREFORE, Defendants pray that Plaintiff's Amended Complaint be dismissed on its merits, with prejudice, and that Defendants have and recover their costs and disbursements including reasonable attorneys' fees and for such other and further relief as the Court deems proper.

Dated at Sioux Falls, South Dakota, this 5th day of October, 2022.

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Electronically Filed